

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MINTEL LEARNING TECHNOLOGY,
INC,

CASE NO. 5:11-CV-01504-EJD

Plaintiff,

**ORDER TO SHOW CAUSE RE
DISMISSAL FOR LACK OF SUBJECT-
MATTER JURISDICTION**

v.

AMBOW EDUCATION HOLDING, LTD
and JIN HUANG,

Defendants.

Mintel Learning Technology, Inc. (“Mintel”) filed this action on March 29, 2011 against Defendants Ambow Education Holding, Ltd. (“Ambow”) and its CEO, Jin Huang. Mintel is a citizen of California. Compl. ¶ 2. Ambow is registered in the Cayman Islands and has its principal place of business in China. Id. ¶ 3. Huang is domiciled and resides in China. Id. ¶¶ 7, 10.

Where there is doubt about the existence of subject-matter jurisdiction over a case, the court should investigate the issue even if the parties have not raised it. Kontrick v. Ryan, 540 U.S. 443, 455 (2004). If the court determines at any time that it lacks subject-matter jurisdiction, it must dismiss the action. Fed. R. Civ. P. 12(h)(3). Lack of jurisdiction is presumed until the party asserting jurisdiction proves otherwise. Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994).

Mintel asserts that the court has diversity jurisdiction over this case, but the complaint fails

1 to adequately plead diversity of citizenship. Intel alleges that Huang is “domiciled” and “resides”
 2 in China, but makes no statement about her citizenship. Allegations of residence do not suffice to
 3 establish citizenship for diversity purposes. Martin v. Broadcast Music, Inc., 244 F.2d 204, 206 (9th
 4 Cir. 1957). The pleading defect is more than a technicality: if at the time of filing Huang was a
 5 United States citizen domiciled in China, her presence as a defendant would destroy diversity. See
 6 Newman-Green, Inc. v. Alfonzo-Larrain, 490 U.S. 826, 828–29 (1989).

7 The court has taken Intel’s Motion for an Order Authorizing Service Pursuant to FRCP
 8 4(f)(3) (filed July 1, 2011, ECF No. 7) and Ambow’s Motion to Dismiss Pursuant to Fed. R. Civ. P.
 9 12(b)(5) (filed July 19, 2011, ECF No. 15) as submitted on the papers. Clerk’s Notice, Oct. 5, 2011,
 10 ECF No. 39. Establishing jurisdiction over the case is necessary prior to ruling on those motions, so
 11 the court must initially resolve the jurisdictional question. The service motions remain under
 12 submission.

13 Plaintiff IS HEREBY ORDERED TO SHOW CAUSE why the case should not be dismissed
 14 for lack of subject-matter jurisdiction. Alternatively, the Plaintiff may amend the complaint to
 15 perfect its jurisdictional allegations. Either filing must be made within fourteen (14) days of the date
 16 of this order. No hearing will be held on this Order to Show Cause unless otherwise ordered by the
 17 court.

18 The court has conducted a review of the procedures of the clerk’s office relating to the
 19 service of foreign defendants and finds that the procedures direct the clerk to address and dispatch
 20 papers pursuant to Fed. R. Civ. P. 4(f)(2)(C)(ii) when a party so requests. Mailing costs must be
 21 borne by the serving party.

22
 23 **IT IS SO ORDERED.**

24
 25 Dated: October 6, 2011

26 
 27 EDWARD J. DAVILA
 28 United States District Judge